

## Message Text

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R 262113Z AUG 75

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

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E.O. 11652: GDS

TAGS: EFIN, ID

SUBJECT: U.S. - INDONESIA DRAFT INCOME TAX CONVENTION

REF: A)JAKARTA 7812 ; B) JAKARTA 10395

1. PER REFTEL REQUEST, DEPT HAS CONSIDERED INDONESIAN PROPOSAL REGARDING TAX TREATY. FOR LAW OF THE SEA REASONS, DEPT BELIEVES WE CANNOT AGREE TO SIMPLE DELETION OF AD ARTICLE 3 IN DRAFT TREATY. WITHOUT AD ARTICLE 3, REFERENCE TO "ADJACENT SEAS" IN ARTICLE 3 COULD ENABLE INDONESIA TO ARGUE THAT U.S. HAS RECOGNIZED INDONESIAN ARCHIPELAGO CLAIM. REFERENCE IN ARTICLE 3 TO "IN THIS CONVENTION..." IS NOT ADEQUATE PROTECTION. REFERENCE TO "IN ACCORDANCE WITH INTERNATIONAL LAW" IS SOME HELP, BUT DOES NOT REPRESENT TOTAL PROTECTION BECAUSE GOI WOULD, OF COURSE, TAKE POSITION THAT ITS CLAIM IS IN ACCORDANCE WITH INTERNATIONAL LAW, AND THAT  
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U.S. HAS IMPLICITLY RECOGNIZED THE EXISTENCE OF "ADJACENT SEAS" DOCTRINE IN INTERNATIONAL LAW. MOREOVER, AD ARTICLE 3

ENSURES THAT THE RIGHTS OF THE GOI UNDER TREATY ARE QUALIFIED FUNCTIONALLY AS WELL AS GEOGRAPHICALLY. ARTICLE 3(1)(B) AS CURRENTLY DRAFTED LEAVES THIS UNCLEAR BECAUSE IT DOES NOT PARALLEL THE LANGUAGE FROM THE 1958 CONVENTION ON THE CONTINENTAL SHELF.

2. WE HAVE REACHED THE CONCLUSION THAT THERE WILL ONLY BE CONTINUING DIFFICULTIES IF WE TRY TO FIND LANGUAGE EXPRESSLY COMPATIBLE WITH DIVERGENT LOS VIEWPOINTS, WHEREAS IN PRACTICAL TERMS WE DO NOT EXPECT THOSE DIVERGENCIES TO AFFECT THE OPERATION OF THE TAX TREATY. ACCORDINGLY, WE BELIEVE THAT EXPRESS REFERENCE TO THE NATURE OF MARITIME JURISDICTION IS NOT NECESSARY IN A TAX TREATY, AND THAT IT WOULD BE PREFERABLE TO ADDRESS THE TAX ISSUE DIRECTLY. ACCORDINGLY, THE EMBASSY IS REQUESTED TO PRESENT THE SUG-

GESTED SIMPLIFICATIONS IN PARA 3 BELOW TO THE GOI, NOTE THAT WE HAVE TAKEN CAREFUL ACCOUNT OF BOTH GOI AND USG VIEWS ON THE ISSUE, AND URGE FAVORABLE CONSIDERATION OF OUR PROPOSAL WHICH BUILDS ON THE INDONESIAN PROPOSAL.

3. (A) WE CAN ACCEPT THE DELETION OF AD ARTICLE 3; (B) DELETE EVERYTHING AFTER THE FIRST TWO SENTENCES IN ARTICLE 3(1)(A); (C) DELETE EVERYTHING AFTER THE FIRST SENTENCE IN ARTICLE 3(1)(B); (D) ADD A NEW SUBPARAGRAPH (C) TO ARTICLE 3(1) AS FOLLOWS: QUOTE, (C) WHEN USED IN A GEOGRAPHICAL SENSE, THE TERMS REFERRED TO IN SUBPARAGRAPHS (A) AND (B) SHALL ALSO INCLUDE OFFSHORE ACTIVITIES SUBJECT TO THE INCOME TAX JURISDICTION OF THE RESPECTIVE CONTRACTING STATES IN ACCORDANCE WITH INTERNATIONAL LAW. UNQUOTE. (E) RELETTER SUBPARAGRAPHS (D) THROUGH (G) TO ARTICLE 3(1) ACCORDINGLY.

4. FYI: EMBASSY SHOULD BEAR IN MIND THAT WE WILL NOT RPT NOT ACCEPT THE SUBSTITUTION OF THE WORD "AREAS" FOR "ACTIVITIES" IN THE NEW SUBPARA (C), AS THE DISTINCTION BETWEEN ACTIVITIES IN THE SAME AREA THAT ARE SUBJECT TO COASTAL STATE JURISDICTION (E.G. RESOURCES) AND THAT ARE NOT SUBJECT TO COASTAL STATE JURISDICTION (E.G. NAVIGATION) LIMITED OFFICIAL USE  
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IS CRITICAL. WE DO NOT BELIEVE THIS POINT SHOULD BE MADE IN ADVANCE, BUT IF THERE IS AN INDONESIAN COUNTER-PROPOSAL ALONG THESE LINES, IT SHOULD BE REJECTED IMMEDIATELY. WE NOTE THAT EVEN INDONESIA, UNDER HER CURRENT POSITION, DOES NOT ASSERT INCOME TAX JURISDICTION OVER FOREIGN VESSELS IN PASSAGE THROUGH THE CLAIMED ARCHIPELAGO. END FYI. INGERSOLL

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